

PT 03-14
Tax Type: Property Tax
Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

KNOX COLLEGE

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

A.H. DOCKET #	00-PT-0045
DOCKET #	99-48-88
	99-48-89
P.I. #	99-15-176-030
	99-15-176-031

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John W. Robinson, Storezbach, Morrison, Robertson, Wilcox and Alcorn for Knox College; Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Knox County Parcel Index Nos. 99-15-176-030 and 99-15-176-031 qualified for exemption during the 1999 assessment year. Mr. Xavier Romano, dean of students and vice-president for student development at Knox College (hereinafter referred to as the "Applicant"); Ellie Kirk, student of applicant and president of Delta Delta Delta sorority; and Ashley Nehrt, student of applicant and president of Pi Beta Phi fraternity¹ were present and testified on behalf of applicant.

The issue in this matter is whether applicant used the parcels in question for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation the requested exemptions be granted. In support thereof, I

¹ Although Pi Beta Phi is a fraternity and Delta Delta Delta is a sorority, in this context the words fraternity and sorority are interchangeable. Both are female organizations.

make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) that Knox County Parcel Index Nos. 99-15-176-030 and 99-15-176-031 did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of Dept. Ex. Nos. 1 and 2. (Tr. p. 10)

2. The Department received the requests for exemption of the subject parcels from the Knox County Board of Review. The board recommended granting the exemptions. The Department denied the requested exemptions finding that the properties were not in exempt use. (Dept. Ex. Nos. 1, 2)

3. The applicant acquired the subject parcels by warranty deeds dated April 22, 1967, and November 23, 1968. (Dept. Ex. Nos. 1, 2)

4. Located on Parcel Index No. 99-15-176-031 is a one-story 1,112 square foot student sorority house leased to the Knox College Chapter of the Pi Beta Phi fraternity. The lease was executed on June 4, 1997 for a ten-year period. The property is rented for \$350.00 per month for eight months or \$2,800.00 for the 1999-2000 school year. The rent covers real estate taxes, maintenance allocation, utilities, property insurance, and depreciation. (Dept. Ex. No. 1; Knox Ex. Nos. 5, 8)

5. Located on Parcel Index No. 99-15-176-030 is an 864 square foot student sorority house. The building and land are leased to the Knox College Chapter of the Delta Delta Delta sorority for an annual rent of \$500.00. The sorority pays its own utilities. The rent covers real

estate taxes, maintenance allocation done by applicant, property insurance, and depreciation. (Dept. Ex. No. 2; Knox Ex. Nos. 3, 7)

6. Applicant was organized on February 15, 1837. Applicant's operating charter states:

The objects of said corporation shall be to promote the general interests of literature, science, religion, the humanities, government, economics, and all fields of higher education in the liberal arts, to qualify young men and young women in the best manner for the various professional, business, scientific, religious and social occupations of society, by carrying into effect a thorough system of mental, moral and physical education to the end that such young men and young women shall be equipped and trained to assume, undertake and perform all obligations of society and of enlightened and responsible citizenship in these United States of America and in other areas of the world. (Knox Ex. No. 6)

9. Applicant is an educational institution as is contemplated under 35 ILCS 200/15-35. (Tr. p. 14)

7. About 20% of the female students at applicant are associated with one of the two sororities on applicant's campus. (Knox Ex. No. 17)

8. The sorority houses on the parcels in question are not residential. (Tr. pp. 48-49)

10. As a residential liberal arts college, applicant's faculty believes very strongly that activities undertaken outside the classroom are as relevant to the educational experience as inside the classroom. To that end, applicant has a multitude of organizations and student activities that it has and continues to strongly support. (Knox Ex. Nos. 9-15; Tr. pp. 17-18)

11. Applicant practices a non-discrimination policy for all its co-curricular or non-classroom activities. (Knox Ex. Nos. 9-16; Tr. pp. 24-28)

12. The sorority houses at issue are subject to all the rules, regulations and policies of the applicant. They cannot discriminate on the basis of race, creed, color, or national origin. Applicant must approve the sororities' recruitment events. (Tr. pp. 27, 35-36, 53-54, 56-60, 66-68)

13. When a female student of applicant wishes to join a sorority, she goes through a formalized rush process that is coordinated by the Office of Student Activities of applicant. Ultimately, the sorority decides who will become members. Not all prospective members are asked to join. (Tr. pp. 41-42, 49, 62-73)

14. Delta Delta Delta Sorority has four national goals: leadership, scholarship, character and service. In order to promote those goals, the sorority raises money for various organizations or philanthropic events including Aids Awareness Week, the Three Day Breast Cancer Walk, and St. Jude's Children Cancer Charity. The house on the subject property, leased to Delta Delta Delta, is used for meetings for the fundraisers and for study sessions for sorority members. The house is not used when school is not in session. (Tr. pp. 55-57)

15. Pi Beta Phi Fraternity has seven national goals that include *inter alia* integrity, scholarship, and leadership. The house on the subject property leased to Pi Beta Phi is used for meetings, educational presentations, and study sessions. The house is not in use when the school is not in session. (Tr. pp. 67-68)

16. With the exception of not providing residences, the properties of the sororities are used in the same way as applicant's fraternities. (Tr. p. 75)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

At issue is the statutory provision found in the property tax code at 35 **ILCS** 200/15-35. That section of the statutes exempts certain property from taxation in part as follows:

All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is: . . .

(b) property of schools on which the schools are located and any other property of schools used by the schools exclusively for school purposes, including, but not limited to, student residence halls, dormitories and other housing facilities for students and their spouses and children, staff housing facilities, and school owned and operated dormitory or residence halls occupied in whole or part by students who belong to fraternities, sororities, or other campus organizations.

The Department relies on Knox College v. Board of Review, 308 Ill. 160 (1923) and McKenzie v. Johnson, 98 Ill. 87 (1983) in support of its argument that the sororities at issue are membership organizations that lease the subject properties and are therefore not entitled to the exemptions. In Knox College v. Board of Review, *supra* (hereinafter referred to as “KC v. BoR”) the Illinois Supreme Court found that several parcels of real estate leased by applicant to

fraternities were not entitled to property tax exemptions. The section of that case quoted in Department's brief states:

The fraternity houses here in question, however, are not shown by the evidence to be buildings created for the indiscriminate use of all students, but are, as we understand the record, open only to the members of the respective fraternities, not by virtue of their college attendance but only upon election to membership in such fraternities under rules established by the societies themselves . . . they are fraternity houses and not unconditionally open to all students and not ostensibly or actually used for educational purposes. KC v. BoR at 166

McKenzie v. Johnson, *supra*, was decided sixty years after KC v. BoR. It is a case in which a property owner filed an action seeking a judgment that the recently enacted tax exemptions for fraternity and sorority houses, parsonages, and homestead improvements were unconstitutional. The Illinois Supreme Court disagreed, finding that the exemptions were constitutional. The court looked at the language that was added by the amendment to the statute in 1967. That language said: “[T]he occupancy, in whole or in part, of a school-owned and operated dormitory or residence hall by students who belong to one or more fraternities, sororities, or other campus organizations shall not defeat the exemption for such property under the terms of this Section.” *Id.* at 79-80 The court said the language was merely a description or illustration of property used exclusively for school purposes.

The Court distinguished KC v. BoR, *supra*, by stating that case concerned a specific fraternity house that was open only to respective members of the fraternity, not by virtue of their college attendance, but rather by the election to the fraternity membership. The court stated: “we cannot say that school-owned fraternity houses *per se* may never qualify for a property tax exemption as property used exclusively for school purposes.” *Id.* at 80 The court did not discuss the particulars of a specific fraternity or sorority house qualifying for an exemption because that issue was not before it at that time.

Applicant also relies upon McKenzie v. Johnson, *supra*. It also asserts that Knox College v. Department of Revenue, 169 Ill.App.3d 832 (3rd Dist. 1988) (hereinafter referred to as KC v. DOR) is particularly relevant. KC v. DOR involved an exemption for two vacant lots and five fraternity houses at applicant. The five houses were owned by the applicant and leased to the fraternities. The court found it clear that college owned buildings used as student residences, dorms and clubs could be exempt as property used primarily for school purposes upon a showing that the governing officials consider the uses necessary to the carrying out of the educational purposes of the college, and the organizations are open to all students without regard to race, creed, or color.

The KC v. DOR court also analyzed KC v. BoR *supra*. It stated:

The position adopted by the Department is based upon *Knox College v. Board of Review* (1923), 308 Ill. 160, 139 N.E. 56, where the fraternities at Knox College were held not tax exempt because the record indicated that the fraternities were not open to all students and were not created for the indiscriminate use of all students. This somewhat narrow basis for determining an exemption was expanded by the 1967 amendment to the Revenue Code stating that occupancy of college property by a fraternity shall not defeat a tax exemption. Thus, an exemption should be granted where fraternities can be shown to be a part of the educational program of the college. In holding that amendment constitutional the supreme court in *McKenzie v. Johnson* (1983), 98 Ill.2d 87, 74 Ill.Dec. 571, 456 N.E.2d 73, made clear that student eligibility for use of fraternity residences was also one of the facts to be considered in granting eligibility. In the instant case, unlike the 1923 case, the testimony is undisputed that the fraternities on the Knox College campus must be open to all students without regard to race, creed, or color. This is sufficient to meet the test of *McKenzie v. Johnson*. KC v. DOR at 837-8

Applicant has established that the two houses at issue herein are leased to sororities. The houses are not used as residences but are used for meetings, educational presentations, and studying. Memberships in the organizations are open to all students regardless of race, color, or creed. The dean of students testified that activities done outside the classroom at applicant are as relevant to the student's college experience as in the classroom setting. Applicant has a non-

discrimination policy that is strictly enforced. The houses on the properties in question are subject to all the rules and regulations of the applicant. I find that this is sufficient to meet the test of McKenzie v. Johnson, *supra* and that the facts at issue are remarkably similar to the facts in KC v. DOR. The properties herein are leased as were the fraternities in KC v. DOR. I do not believe the fact that the areas are not used as residences is controlling. Rather, the fact that there is a non-discrimination policy, plus the testimony of the dean of student activities, a governing official of applicant, that sororities are part of the educational program of the college, is sufficient to warrant a legal conclusion that the use of the subject properties is educational.

For the foregoing reasons, it is recommended that Knox County Parcel Index Nos. 99-15-176-030 and 99-15-176-031 qualify for a property tax exemption for the 1999 assessment year .

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
Date: May 19, 2003